

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
Global Expedited Package Services 5 Contracts
Negotiated Service Agreements

Docket No. MC2016-15

Competitive Product Prices
Global Expedited Package Services 5 Contracts
(MC2016-15)
Negotiated Service Agreement

Docket No. CP2016-20

PUBLIC REPRESENTATIVE COMMENTS ON
POSTAL SERVICE REQUEST TO ADD
GLOBAL EXPEDITED PACKAGE SERVICES 5 CONTRACTS
TO THE COMPETITIVE PRODUCTS LIST

(November 24, 2015)

The Public Representative hereby provides comments pursuant to Order No. 2823.¹ In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service Request to add Global Expedited Package Services (GEPS) 5 Contracts to the competitive product list.² GEPS 5 Contracts include agreements by which the “Postal Service provides prices for some combination of Priority Mail International (PMI), Priority Mail Express International, First-Class Package International Service (FCPIS) and Commercial ePacket (CeP) parcels to a customer, as well as a system through which customs duties are paid by the mailer in

¹ Notice and Order Concerning the Addition of Global Expedited Package Services 5 Contracts to the Competitive Product List, November 17, 2015 (Order No. 2823).

² Request of the United States Postal Service to Add Global Expedited Package Services 5 Contracts to the Competitive Products List, and Notice of Filing (Under Seal) of Contract and Application for Non-Public Treatment of Materials Filed Under Seal, November 16, 2015 (Request).

lieu of the destination country postal operator collecting such duties and taxes from the recipient.” Request at 3.

Prices and classifications not of general applicability for the proposed GEPS 5 Contracts are authorized by Governors’ Decision No. 11-6.³ Its redacted version is filed in Attachment 2 to the Request, and unredacted version is filed under seal.

The Postal Service seeks to add a proposed product designated as GEPS 5 Contracts, together with any subsequent functionally equivalent GEPS 5 contracts, to the competitive products list. Request at 2. The Postal Service believes that the contract’s terms of the GEPS 5 Contract that is subject of this docket fit within the proposed Mail Classification Schedule (MCS) language set forth in Attachment 3 to the Request. Accordingly, the Postal Service proposes the revision to MCS section 2510.3 to accommodate GEPS 5 Contracts. *Id.* at 2-3.

The GEPS 5 contract subject of this docket is set to remain in effect for one calendar year from its effective date, subject to early termination provisions. The Postal Service will notify the customer of the effective date of the agreement “after all necessary reviews of the agreement have been completed”. *Id.* at 4.

COMMENTS

Product List Assignment. Pursuant to 39 U.S.C. § 3642, the Postal Service requests that GEPS 5 Contracts be added to the competitive product list. 39 U.S.C. § 3642 requires the Commission to consider whether “the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.” 39 U.S.C. § 3642(b)(1). Products over which the Postal Service exercises such power are categorized as market dominant while all others are categorized as competitive.

³ See Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, March 22, 2011 (Governors’ Decision No. 11-6).

The Postal Service makes a number of assertions that address the considerations of section 3642(b)(1). Request at 5. These assertions appear reasonable. Additional considerations required by section 3642(b)(3) are addressed in the Statement of Supporting Justification by Ms. Valera. Request, Attachment 1. Based upon the review of justifications provided by the Postal Service, the Public Representative concludes that the Postal Service's request to add GEPS 5 Contracts to the competitive product list is appropriate.

Requirements of 39 U.S.C. § 3633. Pursuant to section 3633(a), prices for competitive products must cover each product's attributable costs, not result in subsidization of competitive products by market dominant products, and ensure that all competitive products collectively contribute an appropriate share of the institutional costs of the Postal Service. Based upon a review of the financial worksheets filed under seal with the Request, it appears that the negotiated prices in the proposed GEPS 5 contract subject of this docket should generate sufficient revenues to cover costs, as well as exceed the minimum cost coverage approved in Governors' Decision No. 11-6.

Nevertheless, the Public Representative observes that the projected cost coverage for the instant contract, as presented in the financial model, is quite modest. The financial model still includes certain contingency factors that provide cost adjustments and allow for some protection against unpredicted circumstances.⁴ However, the provided documentation does not contain solid enough justification for assigning the particular values to these contingency factors. The concern is aggravated by the fact that the product costs appear to be sensitive to even minor changes in values of the contingency factors. Similarly, if volume distribution by weight for Priority Mail International (PMI) is slightly different from the one estimated by the financial model, and if there are also shifts in volume between PMI and Commercial ePacket (CeP) mail services, product costs might exceed revenues.⁵

⁴ See e.g. Public file "Workbook 1 CP2016-20.xls", Sheet '01 Inputs', Rows 30-33.

⁵ As specified in Article 3 of the proposed GEPS 5 contract, two types of mail services, PMI and CeP parcels, are subject of the current contract. See Request, Attachment 4.

The described above concerns make questionable the ability of GEPS 5 Contracts to comply with 39 U.S.C. § 3633(a)(2) requiring each competitive product to cover its attributable costs. Moreover, given the quite modest cost coverage of the instant contract, its addition to the competitive product list would not improve the likelihood that competitive products collectively cover an appropriate share to the Postal Service's institutional costs, as required by U.S.C. 3633(a)(3).⁶ This, of course, assumes that after the instant contract is approved, it remains the only GEPS 5 contract during the fiscal year.

New GEPS 5 Contracts Product and the Baseline Reference. The Postal Service requests that the Commission "list the GEPS contract included in this filing, together with any subsequent functionally equivalent GEPS 5 contracts, as one product on the competitive product list within the MCS." Request at 2. In the quoted text, however, the Postal Service does not make clear whether it is designating the contract subject of this docket as the baseline agreement for the functional equivalency comparisons with future GEPS 5 contracts. However, the proposed revision to section 2510.3.6 of the MCS schedule lists the contract subject of this docket as a baseline reference for GEPS 5 contracts. Request, Attachment 3. The Public Representative suggests the Postal Service gives clarification regarding the baseline reference in the main body of the Request.

After reviewing the provided documentation, the Public Representative agrees with the Postal Service that there is a substantial difference in market characteristics between the products currently included in GEPS product grouping and the proposed GEPS 5 Contracts product.⁷ For example, the Request does not claim that the customers of the proposed GEPS 5 Contracts are small- or medium-sized businesses. Also, the proposed GEPS 5 product is intended to provide prices for additional mail

⁶ The Commission determined a share of 5.5 percent as a minimum contribution regulatory requirement. See 39 C.F.R. § 3015.7(c).

⁷ Compare e.g. Request at 3-4 with Docket Nos. MC2010-28 and CP2010-71, Order Approving Global Expedited Package Services 3 Negotiated Service Agreement, July 29, 2010, at 7 (Order No. 503)

services, specifically - FCPIs⁸ and Commercial ePacket.⁹ These differences support the conclusion that the instant contract, if approved, should be included in the new GEPS 5 product and added to the competitive products list within the MCS.

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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⁸ In September 2012, the Commission approved the Postal Service's request to transfer FCPIs from the market dominant product list to the competitive product list. See Order Approving Request for Product List Transfer, Docket No. MC2012-44, September 10, 2012. (Order No. 1461)

⁹ Commercial ePacket (CeP) became first available in January 2012 as a part of Global Plus 1C product. See Docket Nos. MC2012-6, CP2012-12 and CP2012-13, Order Adding Global Plus 1C to the Competitive Product List and Approving Related Global Plus 1C Agreements, January 19, 2012 at 3-4 (Order No. 1151).